PRACTICE AND PROCEDURE MANUAL
FOR JUDGES AND MAGISTRATE JUDGES
FOR THE MIDDLE DISTRICT OF TENNESSEE
(Judge Robert L. Echols)

I. NAME AND BRIEF BIOGRAPHY

Judge Robert L. Echols

Federal Judicial Service:

U.S. District Court, Middle District of Tennessee

Nominated by George Bush on October 22, 1991, to a new seat created by 104 Stat. 5089; Confirmed by the Senate on March 13, 1992, and received commission on March 18, 1992. Served as Chief Judge, 1998-2005.

Education:

Rhodes College, B.A., 1962

University of Tennessee College of Law, J.D., 1964

Professional Career

U. S. Army, 1966

Law clerk, Hon. Marion S. Boyd, U.S. District Court, Western District of Tennessee, 1965-1966

Legislative assistant, Congressman Dan Kuykendall, U.S. House of Representatives, 1967-1969

Private practice, Nashville, Tennessee, 1969-1992

Night Commissioner, Davidson County, Tennessee, 1974-1975

II. PRELIMINARY GENERAL MATTERS

This Practice and Procedure Manual was compiled by the Federal Court Committee of the Nashville Bar Association. The Committee expresses thanks to all of the Judges and Magistrate Judges, and to the Clerk of the Court, for all of the input and guidance they provided in gathering this information.

In preparing the Manual, efforts were taken to avoid repeating or characterizing rules otherwise contained in the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Local Rules of Court, the Local Rules Governing Duties of and Proceedings before Magistrate Judges, or the Administrative Practices and Procedures for Electronic Case Filing. The Manual does not attempt to be an exhaustive guide for the practice of law. It is intended to provide information about judicial practices and preferences in this District that are not necessarily addressed in any set of rules.

To the extent that there is any conflict between this Manual and these other applicable rules, practices and procedures, the other applicable rules, practices and procedures control. **This Manual is the work of the Nashville Bar Association. It is not an official statement of the Court. This Manual may not be cited as authority.**

Last, at the time the Manual was prepared in 2005, this District had only recently adopted electronic case filing. It appears that some practices related to electronic case filing are still

developing. Therefore, for some time, it may be prudent to address questions about electronic case filing to the Judge or Magistrate Judge in a particular case.

A. Scheduling

The scheduling of court time is handled by Judge Echols' courtroom deputy, (615) 736-2778. Pretrial conferences, status management conferences, pleas, and sentencings are generally conducted on Mondays. These hearings also can be conducted on Fridays if the trial scheduled for that week has completed or is in jury deliberation. Judge Echols sometimes will conduct a hearing at the noon hour, in the late afternoons, or in the mornings at 8:00 or 8:30. Each hearing is set at a specific time and there is no double setting.

B. Correspondence with the Court

Correspondence with the Court is discouraged. Written communication with the Court should be in the form of pleadings, motions, notices, memoranda, and briefs, as provided for in the Federal Rules of Civil Procedure and the Local Rules. In the rare instances when correspondence with the Court is permitted, directed or invited by the Court, a copy of the correspondence shall be served on opposing counsel, and all such correspondence will be filed with the Clerk of Court and is a matter of public record, unless otherwise directed by the Court as in the case of confidential settlement conference statements.

C. Telephone Conferences with the Court

The judges, upon request, generally will attempt to accommodate out-of-town counsel or other circumstances unique to the case by permitting joint telephone conferences with the Court. The judges also may entertain telephone conferences regarding discovery disputes that arise during depositions.

Judge Echols encourages the use of joint telephone conferences with the Court to resolve discovery disputes and other simple matters.

D. Telephone Conference with Law Clerks

Judge Echols discourages telephone conferences with his law clerks. The merits of the case should never be discussed with the law clerks.

E. Pro Se Litigants

Pro se litigants are expected to follow the Local Rules and these guidelines, as are all parties represented by counsel.

F. Chamber Copies of Filings

Judge Echols does not accept chamber copies.

III. PRETRIAL MATTERS FOR CIVIL CASES

A. Case Management Conferences and Orders

Judge Echols refers all new cases to the magistrate judges for case management purposes. Scheduling orders or changes thereto are addressed with the magistrate judge assigned to the case.

B. Agreed Orders, Continuances and Extensions

Judge Echols does not automatically grant extensions and he prohibits informal agreements among counsel to alter dates. He will address requests regarding dispositive motions and trial dates; any other requests will be addressed by the magistrate judge. All requests should be in writing, accompanied by a proposed order.

C. Pretrial Motions

1. Referral to Magistrate Judge

Judge Echols refers most non-dispositive motions to a magistrate judge, but not dispositive motions.

2. Dispositive Motions

The district judges, with the exception of pro se cases, normally resolve dispositive motions without reference to a magistrate judge. District judges may refer specific dispositive motions to a magistrate judge for a Report and Recommendation and will normally refer all dispositive motions in cases where at least one of the litigants is pro se.

If depositions are filed in support of a motion, attorneys should designate the specific pages and lines to be considered.

3. Briefs

Absent unusual circumstances, memoranda in support of a motion and responses thereto should comply with the Local Rule limit of 25 pages. Judge Echols will restrict replies to 5 pages, absent unusual circumstances. Surreplies are strongly disfavored. Generally speaking, a concise, well-written brief will be more persuasive than a wordy pleading full of string cites. A short brief and reply on unusual aspects of a case are appreciated.

4. Oral argument

Judge Echols grants oral argument when it is appropriate or when it would be beneficial.

D. Discovery

1. Interrogatories

Questions and requests should be brief, to the point, and tailored to the issues in the case, and answers should be responsive and clear. “Canned” interrogatories and requests for production should be avoided unless they are tailored and eliminate broad, sweeping and unduly burdensome requests.

2. Telephone Depositions

Judge Echols has no applicable comments regarding this section.

3. Discovery Disputes

The judges agree that every effort should be made by the attorneys to resolve discovery disputes before bringing them to the Court's attention.

Most discovery matters are referred to the magistrate judge assigned to the case. Discovery disputes, therefore, are typically heard by the magistrate judge. But, if Judge Echols has taken over management of the case, it usually means he is not satisfied with the progress being made. Counsel should make every effort to settle discovery disputes before involving Judge Echols. If counsel cannot resolve a discovery dispute without involving the Court, Judge Echols will usually meet with the attorneys or conduct telephone conferences early in the morning before court begins, at the noon hour, or in late afternoon. Such conferences or telephone conferences should be scheduled through his courtroom deputy.

4. Motions to Compel/Rule 37 Sanctions

Judge Echols has no applicable comments regarding this section.

E. Confidentiality Agreements and Protective Orders

Judge Echols considers them on a case-by-case basis.

F. Expert Witnesses

Judge Echols does not require expert testimony be reduced to writing to be read at trial.

G. Settlement Conferences

1. Who Presides

All judges handle settlement conferences for each other. Most settlement conferences are done by magistrate judges who are not assigned to the case as case manager, although parties may request the case manager to preside. The selection of a judge to preside over a settlement conference is viewed as an appropriate use of forum shopping.

Judge Echols encourages settlement conferences and inquires about settlement possibilities often. The parties are required to at least talk about settlement, and are encouraged to talk about it early. Judge Echols encourages the attorneys to take advantage of the experience and expertise of the attorneys who have qualified as "neutrals" to assist the Court and parties in settlement of cases, in reaching an acceptable out-of-court settlement of their case. The ADR Coordinator in the clerk's office maintains a list of these neutrals.

2. Procedure

The general procedure for settlement conferences in non-jury cases is as follows: The settlement judge will issue an order setting forth his or her requirements for a judicial settlement conference. Normally, the parties will be required to provide the settlement judge with a confidential evaluation of their case and their demands. These confidential statements should be submitted directly to the settlement judge's courtroom deputy and not filed with the Court. They do not become part of the case file.

This submission should include a description of the case, the amount of the offer, the party's evaluation of the case, the cost of litigation, and representation that these matters have been discussed with the client. Any information that is not to be communicated to the other side needs to be designated as such. All individual parties must be present with full settlement authority, and all corporate parties must be present with representatives having full settlement authority unless prior approval is otherwise obtained. The attorneys are requested to give a short opening statement in the courtroom with everyone present.

The settlement judge then meets with the parties separately, and will meet with the attorneys individually, out of the presence of their clients. If settlement is reached, it is preferred that a settlement agreement be executed before the parties leave the courthouse.

H. Pretrial Briefs

Judge Echols requires pretrial briefs in a jury case. They are not required in a non-jury case. In a non-jury case, the general policy is to submit proposed findings of fact and conclusions of law after the trial and not file pretrial briefs. If there is a critical issue that an attorney feels a need to address, he/she and opposing counsel are permitted to file a brief on that particular critical issue before the trial. In Judge Echols' opinion, the most effective pretrial briefs are those which are reasonably brief, to the point, and deal with the pivotal issues to be decided.

I. Pretrial Orders

Judge Echols' requirements as to the contents and time of filing pretrial orders are covered in his order setting the case for trial.

J. Pretrial Conference

Counsel must submit to the Court prior to the pretrial conference the following: (1) joint proposed jury instructions, with citations to supporting authorities; (2) proposed jury verdict forms; (3) stipulations; (4) motions in limine; (5) witness list; and (6) exhibit list.

Counsel shall also be prepared at the pretrial conference to: (1) identify and discuss undisputed facts and issues; (2) discuss the status of discovery; (3) preview proposed testimony; (4) discuss expert testimony; (5) preview proposed exhibits; (6) discuss motions in limine; (7) discuss settlement; and (8) discuss what shall be in the pretrial briefs and when the briefs shall be filed.

The parties may be required to file additional materials as necessary.

K. Temporary Restraining Orders

The clerk will notify the assigned judge when a TRO is being requested at the time the complaint is filed. The papers should state what efforts have been made to contact the other side. Hearings, if any, will be scheduled through the courtroom deputy of the district judge to whom the TRO application is assigned. The assignment of the TRO application and the assignment of the case are separate matters. The judge who decides the TRO may or may not be the judge who has been assigned to the case.

If a TRO matter is filed other than at the initiation of the case, counsel should advise the secretary of the presiding judge.

Requests for expedited discovery will be considered upon written motions if good cause is shown.

IV. PRETRIAL MATTERS FOR CRIMINAL CASES

A. Initial Appearances, Detention Hearings and Preliminary Hearings

When a person is arrested on federal charges, the person ordinarily must be taken before a magistrate judge without unnecessary delay. Prior to this Initial Appearance, a pretrial services officer will provide the client with a financial affidavit if the defendant is seeking appointment of counsel, and will also provide a form called Important Notice to Defendant and Explanation of Rights and Proceedings. At the Initial Appearance, the magistrate judge will review these documents, the charges, and the statutory maximum penalties with the defendant. Fed. R. Crim. P. 5 sets forth the requirements for Initial Appearances.

In addition to the Initial Appearance, a magistrate judge will conduct the Arraignments, Detention Hearings, and Preliminary Hearings when the defendant has been arrested pursuant to a complaint. See Fed. R. Crim. P. 5.1 (Preliminary Hearings); Fed. R. Crim. P. 10 (Arraignments); 18 U.S.C. § 3142 (Bail Reform Act).

In felony cases where a defendant has been indicted, the defendant may submit a written "Waiver of Personal Appearance at Arraignment and Entry of Plea of Not Guilty," in lieu of an in-court arraignment.

In cases involving non-English speaking defendants, the Court will provide an interpreter to interpret during the court proceedings. If defense counsel requires an interpreter to converse with the client before the Initial Appearance, counsel should contact the interpreter directly to

arrange the meeting. The name and phone number for the interpreter can be obtained from the Clerk's Office at (615) 736-5498.

B. Discovery and Pretrial Motions

In felony cases, the practice in the Middle District is for the district judges to hear all pre-trial matters, such as admissibility of confessions, suppression of evidence, motions to dismiss, etc. If a particular matter is referred to a magistrate judge, it will be handled on an expedited basis. For petty offenses, which do not require consent, and for misdemeanors where consent to proceed before the magistrate judge has been granted, the magistrate judge will conduct all pretrial matters.

All judges will schedule suppression hearings when necessary in a particular case. Generally, the judges will try to schedule suppression hearings well in advance of trial.

Judge Echols states that attorneys often forget or ignore pretrial motion deadlines, which makes the motion subject to denial for failure to comply. However, attorneys continue to file motions on the eve of trial or on the day of the trial. This practice is risky and is not fair to the opponent or to the court. If not denied for violating the deadline, the motion will frustrate the plan of the Court, delay the start of the trial, and waste the time of the jury.

C. Status Conferences and Pretrial Conferences

Judge Echols has no applicable comments regarding this section.

D. Locating Incarcerated Clients

There are no federal detention facilities currently located in the Middle District of Tennessee. The United States Marshals Service contracts for space with a number of local detention facilities in Tennessee and Kentucky. If a defendant is detained pending trial, defense counsel may contact the United States Marshal's Office at (615) 736-5417 to find out where their client is located. Defense counsel should then contact the facility directly concerning visitation and other rules of the particular facility where the client is located.

E. Service of Subpoenas for Criminal Proceedings

If defense counsel has been appointed by the Court, the United States Marshal will serve subpoenas on behalf of the defendant. Defense counsel must obtain an order from the district court judge that directs the United States Marshal to serve the subpoenas. This order should be obtained, and the list of subpoenas should be provided to the United States Marshal, well in advance of the criminal proceedings where the witnesses shall appear.

F. Requests for Continuances of Trials in Criminal Matters

Most judges require that a Waiver of Speedy Trial Rights, signed by the defendant, be filed along with a motion to continue a criminal trial.

Counsel should not assume that a trial will be continued automatically upon request of the parties. Further, each judge has different procedures and deadlines for filing motions to continue trials.

G. Guilty Pleas

The Court has standard plea petition forms that must be completed and submitted by the defendant in felony and misdemeanor cases. These form petitions are available on the Court's website. Even in cases where the defendant has entered a plea agreement with the U.S. Attorney, the standard plea petition must be submitted as well.

V. TRIAL PROCEDURES

A. Scheduling

Jury trials in Nashville usually begin on Tuesdays at 9:00 a.m. and continue until concluded. The court day generally runs from 9:00 a.m. to 5:00–5:30 p.m. with a one-hour lunch break. However, counsel should be prepared to arrive early or stay late in order to discuss matters outside the presence of the jury or when the jury wishes to deliberate past normal working hours.

B. Out-of-Town Parties, Witnesses or Attorneys

The judges will attempt to accommodate out-of-town parties, witnesses and attorneys to the extent possible, although local counsel is expected to be ready to try the case. In attempting to accommodate out-of-town parties, witnesses and attorneys, the judges take into consideration potential hardship to other cases and the efficient administration of justice.

C. Motions in Limine

All of the judges encourage motions *in limine*. They alert the judges to evidentiary issues that will arise at trial and, when appropriate, may help narrow issues for trial. If a motion *in limine* is not decided until trial, the non-moving party should be careful to not go into a matter that is the subject of a motion *in limine*, whether in opening statements or with a witness, until a ruling has been made.

Judge Echols wants motions *in limine* filed in advance of the pretrial conference so that they may be argued at that time.

D. Voir Dire and Jury Selection

All of the judges permit reasonable *voir dire* by the attorneys after initial questions by the Court. Counsel will not be permitted to argue their case or get too personal with the jury. Beyond this, there is some variation among the judges regarding how they handle *voir dire* as discussed below.

Judge Echols' method of jury selection in a civil case is to seat all the jurors on the panel at once by their randomly selected seat number. The judge will discuss with the attorneys ahead of time the number of jurors to be selected (usually eight in a routine civil case, but perhaps more in a

lengthy trial) and the amount of time they have in which to ask follow-up questions after the judge's initial questions. Both sides are given an equal amount of time, usually about fifteen to twenty minutes. He does not tell the attorneys what to ask, but he will interrupt if the questions are not appropriate. He will ask sensitive questions as a part of his initial questions if requested by an attorney. After the initial and follow-up questions by the attorneys, the attorneys are called to the bench to inquire if there are any challenges for cause. Challenges for cause are ruled upon by the Court at that time. Three peremptory challenges are normally allowed, and each side is given a peremptory strike sheet to list the name and seat number of the stricken juror. If both sides strike the same juror, it counts as a strike for each side. There are no back strikes. The Court will seat the first eight non-stricken jurors based on their random assigned seats beginning with the juror in seat number one. In a criminal case, the same procedure is followed.

E. Note-Taking by Jurors

All of the judges allow jurors to take notes and to take their notes into the jury room during deliberation. All of the judges instruct the jury regarding the use of notes.

F. Opening Statements

1. Length

Although the judges may consider a time limit on a case-by-case basis for good cause, there is no set time limit for opening statement by any of the judges. Also, the judges agree that opening statements should be direct and not contain arguments of counsel. Subject to the caveat that the judges all may make case-by-case determinations for good cause, some of the judges have provided additional guidelines regarding the expected length of opening statements.

Judge Echols gets an estimate from the attorneys as to how long their opening statements will last. He generally suggests no more than fifteen (15) minutes.

2. Use of Exhibits

Counsel who wish to use exhibits or demonstrative evidence in opening statement should consult with opposing counsel in advance and attempt to work out any objections. Counsel should also request permission from the judge to use exhibits or demonstrative evidence in opening statements. As a general rule, exhibits to which no counsel has an objection will be allowed during opening statement, and contested exhibits will not be allowed without prior Court approval.

G. Courtroom Decorum and Witness Examination

Attorneys shall stand when speaking, and all objections and comments thereon shall be addressed to the Court. There shall be no oral confrontation between opposing counsel, and neither counsel nor parties may leave the courtroom without prior approval of the judge.

There is some variation among the judges regarding where counsel should stand in the courtroom and regarding how documents are passed. Except as noted below, it is generally expected that counsel will remain behind, or within an arm's length, of the podium, ask

permission to approach a witness, and that the judge's clerk or a courtroom officer will pass exhibits to the witness. Attorneys should introduce their witnesses with the background information referred to in LR 39.01(c)(2) and avoid time-consuming questions on that subject. Attorneys shall make their objections without speeches or coaching the witness. Attorneys should not repeat or attempt to recharacterize a witness's answers during an examination.

H. Side Bar Conferences

Side bar conferences are allowed, but requests for them should be kept to a minimum and used only for matters that can be resolved quickly. One of the reasons to keep side bar conferences to a minimum is that, due to the size of some of the courtrooms, it is not always possible to prevent the jury from hearing such conversations.

I. Videotaped or Audiotaped Testimony

Videotaped or audiotaped testimony is allowed. Attorneys should edit the tape to remove irrelevant and objectionable material. Opposing counsel should be allowed to view the tape before it is presented. The use of videotaped testimony should be discussed at the pretrial conference so appropriate equipment can be made available at the trial.

J. Deposition Reading

Reading a deposition into the record is allowed. Depositions read at trial should be edited so that only testimony relating to the witness's background, the issues in the case and credibility is read. It is permissible to have co-counsel or a paralegal read the answers of the witness from the witness box when a deposition is to be read at trial.

If a transcript is lengthy and it is a non-jury trial, counsel may ask the Court if it would prefer to just have the transcript submitted rather than read into the record.

K. Exhibits

When introducing an exhibit, counsel should always show it to opposing counsel first and have an extra copy available for the Court. Copies of each party's exhibit list and witness list shall be provided to the Court, the courtroom deputy, court reporter and opposing counsel on the first day of trial.

Premarked: Judge Echols wants exhibits to be premarked. Judges Echols requires using the Court's labels for premarking.

Multiple copies of exhibits: Judge Echols requires four (4) copies of every exhibit (witness, Court, opposing counsel and examining attorney), and he encourages the use of the overhead evidence presenter to eliminate the time-consuming process of passing exhibits to the jury.

Exhibit notebooks: Judge Echols encourages the use of exhibit notebooks for the jurors, especially if exhibits are voluminous.

Stipulation as to admissibility and authenticity: The parties should stipulate as to the admissibility and authenticity of as many exhibits as possible prior to trial.

L. Witness Lists

Witness lists should be provided to the Court, the courtroom deputy, the court reporter and opposing counsel at the beginning of the trial.

M. Courtroom Technology

Use of courtroom evidence presenter with camera and screen/visual aids: All of the courtrooms have wireless internet connectivity. Judge Echols encourages the use of the courtroom evidence presenter with camera and screen to present documents and exhibits. All judges expect counsel who plan to use courtroom technology to learn how to use it prior to trial so they can accomplish what is intended without assistance from the courtroom staff.

N. Motions for Judgment as a Matter of Law

If a party can anticipate this motion, it should give the Court advance notice and file a brief in support of the motion. Otherwise, it will be heard on oral motion and argument. In many cases a ruling will be delayed until after a jury verdict.

O. Proposed Jury Instructions and Verdict Forms

In addition to the requirements of LR 51.01, Judge Echols requires all proposed jury instructions and verdict forms to be filed prior to the pretrial conference. The order setting the pretrial conference will set the filing deadline.

P. Proposed Findings of Fact and Conclusions of Law

In a non-jury case, the general policy is to submit proposed findings of fact and conclusions of law after the trial (usually within 20 to 30 days) and not file pretrial briefs. Findings of fact and conclusions of law are submitted after the transcript is filed (if a transcript is ordered). Citation to the record is required if there is a transcript. However, even if no transcript is filed, references to specific testimony and documents are helpful and persuasive. Unless provided otherwise, findings and conclusions are to be submitted by the parties on the same date.

Q. Offers of Proof

Offers of proof are allowed. Most frequently, they will take place outside the presence of the jury, usually during a break, at lunch or at the end of the day.

R. Closing Argument

Counsel may not express personal opinions or beliefs (such as statements that begin with "I believe…"), or make personal references to other lawyers. Counsel may argue any inferences from the proof that are logical and supported by the evidence.

Judge Echols discusses with the attorneys the time requested for closing arguments and a specific time limit is set.

S. Jury Deliberation

1. Copies of Instructions

Jurors get copies of jury instructions. Four copies are generally sent back to a deliberating jury.

2. Access to Exhibits

Absent any objections, and subject to Item 3 below, jurors are given access to exhibits admitted at trial. Exhibits are sent to the jury room at the beginning of deliberation.

3. Access to Transcript of Testimony or Videotaped Testimony

Due to the concern that access tends to give undue emphasis to testimony which is transcribed or videotaped, this is discouraged and not frequently allowed. However, the judges will make determinations on a case-by-case basis.

4. Availability of Counsel

Counsel will not be required to remain at the courthouse during jury deliberations, but they must advise the courtroom deputy of a phone number where they can be reached on short notice. Counsel must be available to appear in Court without unreasonable delay while the jury is deliberating.

5. Taking the Verdict and Special Interrogatories

The judges will read the verdict form and special interrogatories.

6. Polling the Jury

Judge Echols will poll the jury in every case.

7. Interviewing the Jury

LR 39.01(f)(2) controls requests for post-verdict interviewing of jurors.

The parties may file a motion for permission to interview the jurors, but Judge Echols usually does not allow personal interviewing of jurors after the trial. Judge Echols will allow attorneys to submit proposed written jury questions to him for approval with copies to the other side. Those questions approved will be mailed to the jurors. The jurors are told they are not required to answer the questions. Written answers of jurors are submitted to the court and are furnished to both sides.

T. Requests for Attorneys' Fees

All requests for attorneys' fees should be made by filing an application in writing supported by detailed affidavits and time records.

VI. SENTENCING IN CRIMINAL CASES

LCrR 32.01 sets forth the timetable to be followed before a sentencing hearing. The Court will schedule a sentencing hearing at least 80 days after a finding of guilt by a jury, or after the submission of a guilty plea by a defendant.

Shortly after the finding of guilt or submission of guilty plea, a probation officer will contact defense counsel to arrange a presentence interview with the defendant and counsel.

Both parties are expected to confer with the probation officer during the presentence investigation process with a view toward resolving any disputed facts or factors.

Fed. R. Crim. P. 32 requires the probation office to disclose the presentence report to the defendant at least 35 days before sentencing. LCrR 32.01 then requires both parties, within 14 days of receiving the presentence report, to provide written objections concerning the contents of the presentence report. The objections should be provided both to the probation office and opposing counsel.

Within seven days of receiving the parties' objections, the probation office must disclose any changes or unresolved factual disputes or objections that remain in the presentence report.

At least seven days prior to sentencing, the parties shall file with the clerk, and with a copy to probation and opposing counsel, a pleading entitled "Position of the (Government or Defendant) With Respect To Sentencing Factors" containing only unresolved matters previously raised with all parties in writing.

With consent of the parties or when the interests of justice require the Court may on a case-by-case basis modify the requirements set forth in LCrR 32.01 in order to carry out prompt and fair sentencing.

VII. MEDIA COMMUNICATIONS

The Court speaks through its orders and memorandum opinions.